

LAW OFFICES
WILLIAM J. GEARTY
A PROFESSIONAL CORPORATION
301 Morris Avenue
SPRING LAKE, NEW JERSEY 07762

(732) 449-1114

FAX: (732) 449-7292

January 2, 2009

Via Electronic Filing

Clerk's Office

United States District Court

District of New Jersey

Clarkson S. Fisher Federal Building & U.S. Courthouse

402 E State Street

Trenton NJ 08608

Re: Villari v. Township of Wall, et als
Docket No.: 3:06-cv-4 (FLW)

Dear Sir/Madam:

Enclosed herein please find Notice of Motion for Summary Judgment returnable February 2, 2009 before Honorable John J. Hughes. This is supported by a Statement of Material Facts as to which there does not exist a genuine issue, Certifications of Defendants Nash and William J. Gearty, police report and copy of depositions.

Very truly yours,

/s/ William J. Gearty

William J. Gearty

WJG\mb

Enclosures

cc: Layni Rothbort, Esq.
- and Certified Mail, RRR 7004 2510 0007 3393 0873 -
John T. Bazzurro, Esq.
John J. Bonello, Esq.

WILLIAM J. GEARTY, ESQUIRE

301 Morris Avenue
Spring Lake, New Jersey 07762
Telephone: (732) 449-1114
Facsimile: (732) 449-7292
Attorney for defendant, Officer Nash
wgearty@verizon.net

DAVID K. VILLARI,

Plaintiff,

v.

TOWNSHIP OF WALL, TOWNSHIP OF
WALL POLICE DEPARTMENT, SCOTT
FIFIELD, S. NASH, BADGE #157,
SERGEANT PROMPHREY, JOHN DOE,
being a fictitious name, WEARING BADGE
#151, SERGEANT E. P. LOKERSON,
BADGE #119, E. LISTER, BADGE #142,
MICHAEL MALONE, BADGE #153, John
Does #1 - 10,

Defendants.

: UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

:
Civil Action No. 06-CV-4 (FLW)

:
U.S. Magistrate John J. Hughes

:
Civil Action

:
NOTICE OF MOTION FOR

:
SUMMARY JUDGMENT ON

:
BEHALF OF DEFENDANT,

:
STEVEN NASH

:

TO: **LAYNI S. ROTHBORT, ESQUIRE**

49 Oval Road
Millburn, NJ 07041
Attorney for Plaintiff

JOHN L. BONELLO, ESQUIRE

Manna & Bonello, Esqs.
648 Ocean Avenue
West End, NJ 07740
Attorney for Defendants, Township of Wall, Township of Wall Police Department,
Sgt. Promphrey, Sgt. E.P. Lokerson, Michael Malone

JOHN BAZZURRO, ESQUIRE

Chamlin, Rosen, Uliano & Witherington
268 Norwood Avenue
P.O. Box 38
West Long Branch, NJ 07764
Attorneys for Defendant, Nash

COUNSEL:

PLEASE TAKE NOTICE that on the 2nd day of February, 2009 or as soon thereafter as counsel may be reached, the undersigned attorney for defendant, Nash, shall make application to the United States District Court, District of New Jersey, before the Honorable John J. Hughes, U.M.U.S.D.C. at the Fisher Federal Building & U.S. Courthouse, 402 East State Street, Room 6000, Trenton, New Jersey 08625 for an Order granting summary judgment on behalf of defendant Steven Nash.

This defendant-movant will rely upon the following documents all of which are filed herewith and made a part hereof.

Exhibit A - Statement of material facts as to which there does not exist a genuine issue;

Exhibit B - Certification of defendant, Steven Nash;

Exhibit C - 1 /4/04 police reports filed by Officer Nash;

Exhibit D - Selected passages from the deposition testimony of the plaintiff David K. Villari taken and sworn to in this cause;

Exhibit E - Certification of William J. Gearty as to the authenticity of the deposition passage produced as Exhibit C;
Brief in support of this motion.

Proposed form of Order granting this motion.

The defendant-movant Steven Nash hereby requests oral argument of the motion.

/s/ William J. Gearty

WILLIAM J. GEARTY
Attorney for Defendant Steven Nash

CERTIFICATION

1. I the undersigned am employed by the firm of William J. Gearty, attorney for the defendant.

2. On the date listed below, I served a copy of the within notice of motion, statement of material facts as to which there does not exist a genuine issue, supporting certifications with exhibits, brief and proposed form of order upon all parties at the addresses which appear below by way of electronically filing same with the Clerk of the United States District Court, District of New Jersey, Clarkson S. Fisher Federal Building U.S. Courthouse, 402 E State Street, Trenton, NJ 08608:

LAYNI S. ROTHBORT, ESQUIRE

49 Oval Road
Millburn, NJ 07041
Attorney for Plaintiff

JOHN L. BONELLO, ESQUIRE

Manna & Bonello, Esqs.
648 Ocean Avenue
West End, NJ 07740
Attorney for Defendants, Township of Wall, Township of Wall Police Department,
Sgt. Promphrey, Sgt. E.P. Lokerson, Michael Malone

JOHN BAZZURRO, ESQUIRE

Chamlin, Rosen, Uliano & Witherington
268 Norwood Avenue
P.O. Box 38
West Long Branch, NJ 07764
Attorneys for Defendant, Nash

3. On the date listed below, I additionally served a copy of the within notice of motion, statement of material facts as to which there does not exist a genuine issue, supporting certifications with exhibits, brief and proposed form of order upon counsel for the plaintiff, Layni S. Rothbort, at 49 Oval Road, Millburn, NJ 07041, by placing in the United States Mail at the Post Office in Spring Lake Heights, New Jersey, a copy of the same directed to her by certified mail return receipt requested number 7004 2510 0007 3393 0873.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Marcia L. Boynton

MARCIA L. BOYNTON

Dated: January 2, 2009

EXHIBIT A

WILLIAM J. GEARTY, ESQUIRE

301 Morris Avenue
Spring Lake, New Jersey 07762
Telephone: (732) 449-1114
Facsimile: (732) 449-7292
Attorney for defendant, Officer Nash
wgearty@verizon.net

DAVID K. VILLARI,

Plaintiff,

v.

TOWNSHIP OF WALL, TOWNSHIP OF
WALL POLICE DEPARTMENT, SCOTT
FIFIELD, S. NASH, BADGE #157,
SERGEANT PROMPHREY, JOHN DOE,
being a fictitious name, WEARING BADGE
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BADGE #119, E. LISTER, BADGE #142,
MICHAEL MALONE, BADGE #153, John
Does #1 - 10,

Defendants.

: UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

:

Civil Action No. 06-CV-4 (FLW)

:

U.S. Magistrate John J. Hughes

:

Civil Action

:

STATEMENT OF MOVANT NASH

:

OF MATERIAL FACTS AS TO

:

WHICH THERE DOES NOT

:

EXIST A GENUINE ISSUE

:

The movant Steven Nash states that the material facts as to which there does not exist a genuine issue are:

1. The defendant Nash was a police officer on January 4, 2004 employed by the Township of Wall, New Jersey. At all times mentioned herein, he was serving in his official capacity as a police officer. **See Exhibit B, Paragraph One.**

2. While on patrol duty on January 4, 2004, at approximately 13 minutes after noon, Nash was dispatched to 1737 Belmar Boulevard. Dispatch advised him that one Robert Bodtmann was at police headquarters requesting first aid. Bodtmann had reported that plaintiff David Villari struck him in the upper left arm with a baseball bat. He had further reported that Villari broke out two windows on the driver's side of the Bodtmann van. He reported that the shattered glass struck his two children seated in the rear and that both were covered with glass from the broken window and Joseph's hand was cut. **See Exhibit B, Paragraph Two; Exhibit C, Page Four.**

3. Defendant Nash approached plaintiff David Villari and his father, William Villari, and inquired as to what they had done. Officer Nash asked Villari how the window on the van came to be broken. Villari admitted that he broke the window out with a shovel as Bodtmann was trying to run him over. Based on the information from dispatch and based on the statement from Villari concerning the broken windows, Nash placed him under arrest for criminal mischief, an indictable offense. **See Exhibit B, Paragraph 3; Exhibit C, Page Four.**

4. Villari was transported to headquarters without incident. In addition to the criminal mischief charge, which was the basis of my arrest, he was also charged with:

2C:12-1b(2) Aggravated Assault (Robert Bodtmann)

2C:12-1b(3) Aggravated Assault (Joseph Bodtmann)

2C:12-1b(3) Aggravated Assault (Christina Bodtmann)

2C:24-4a Endangering the Welfare of a Child (Joseph Bodtmann)

2C:24-4a Endangering the Welfare of a Child (Christina Bodtmann)

2C:39-4d Possession of a Weapon for Unlawful Purpose

See Exhibit B, Paragraph Four.

5. The deposition of the plaintiff was taken on February 1, 2008. In that deposition, he described Nash's conduct during the course of his arrest. The selected passages of that deposition appear as **Exhibit D**. He called defendant "a nice cop." **T112-13**. He said he was "very nice, very polite. He was a gentleman." **T112-19, 20**. He stated, "he was a gentleman. He was very polite." **T136**. He also stated, "he was an officer that was a gentleman." Again, he stated "he was a gentleman." **T120-17**

6. At police headquarters, Bodtmann, the other party, was charged with criminal mischief. **Exhibit B, Paragraph Six; Exhibit C, Page Five.**

7. Bodtmann was also transported to Jersey Shore Medical Center for the large welt on his arm where, as Bodtmann alleges, he was struck with a baseball bat by Villari. **Exhibit C, Page Eight.**

8. I had never met Mr. Bodtmann before the January 4, 2004 date of this incident. I had no dealings with him whatsoever. **Exhibit B, Paragraph Eight.**

9. At sometime, a long while after January 4, 2004 Bodtmann and Villari appeared together in court with their attorneys and dismissed all charges against one another. **Exhibit B, Paragraph Nine.**

Respectfully Submitted,

/s/ William J. Gearty

William J. Gearty
Attorney for defendant, Steven Nash

Dated: January 2, 2009

EXHIBIT B -

Signed Certification of

Defendant Nash

(Attached)

WILLIAM J. GEARTY, ESQUIRE

301 Morris Avenue

Spring Lake, New Jersey 07762

Telephone: (732) 449-1114

Facsimile: (732) 449-7292

Attorney for defendant, Officer Nash

wgearty@verizon.net

DAVID K. VILLARI,

Plaintiff,

TOWNSHIP OF WALL, TOWNSHIP OF
WALL POLICE DEPARTMENT, SCOTT
FIFIELD, S. NASH, BADGE #157,
SERGEANT PROMPHREY, JOHN DOE,
being a fictitious name, WEARING BADGE
#151, SERGEANT E. P. LOKERSON,
BADGE #119, E. LISTER, BADGE #142,
MICHAEL MALONE, BADGE #153, John
Does #1 - 10,

Defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 06-CV-4 (FLW)

U.S. Magistrate John J. Hughes

Civil Action

**CERTIFICATION OF
DEFENDANT STEVEN NASH
IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Officer Steven Nash, of full age, upon his certification, deposes and says:

1. On January 4, 2004, I was and I still am employed by the Township of Wall, NJ as a police officer. At all times mentioned herein, I was serving in my official capacity as a police officer. All of my actions and statements were made under color of law.
2. While on patrol duty on January 4, 2004, at approximately 13 minutes after noon, I was dispatched to 1737 Belmar Boulevard. Dispatch advised me that Robert

Bodtmann was at police headquarters requesting first aid. Bodtmann had reported that plaintiff David Villari struck him in the upper left arm with a baseball bat. He further reported that Villari broke out two windows on the driver side of the van as well as the front window on the same side. Bodtmann reported that the shattered glass struck his two children seated in the rear and that police were covered with glass from the window. His son Joseph's hand was cut.

3. I was the first officer to arrive on the scene. I approached David Villari and his father, William Villari, and enquired as to what they had done. I asked Villari specifically how the window on the van came to be broken. Villari admitted that he broke the window with a shovel as Bodtmann was trying to run him over. He produced the shovel, which he used. Based on the information from the dispatcher and based on the statement from Villari concerning the broken windows, I placed him under arrest for criminal mischief as an indictable offense.

4. Villari was transported to headquarters without incident. In addition to the criminal mischief charge, which was the basis of my arrest, he was charged with:

N.J.S.A. 2C:12-1b(2)	Aggravated Assault (Robert Bodtmann)
N.J.S.A. 2C:12-1b(3)	Aggravated Assault (Joseph Bodtmann)
N.J.S.A. 2C:12-1b(3)	Aggravated Assault (Christina Bodtmann)
N.J.S.A. 2C:24-4a	Endangering the Welfare of a Child (Joseph Bodtmann)
N.J.S.A. 2C:24-4a	Endangering the Welfare of a Child (Christina Bodtmann)

5. I have reviewed the plaintiff's deposition taken on February 1, 2008. The statement of their content appearing in the statement of material facts is accurate.

6. While at police headquarters, Robert Bodtmann was also charged with criminal mischief.

7. I know that Bodtmann was transported to Jersey Shore Medical Center for treatment of the large welt on his arm where he alleges he was struck with a baseball bat by Villari.

8. I have never met Mr. Bodtmann before the January 4, 2000 date of this incident. I had no dealings with him whatsoever.

9. At sometime after the January 4, 2004 incident, Bodtmann and Villari appeared together in court with their attorneys and dismissed all charges against one another.

10. Appended hereto as **Exhibit C** is a collection of all official reports filed by me concerning this incident. I have reviewed all statements made therein. All of them are true and accurate.

CERTIFICATION

I hereby certify that the foregoing statements made by me are true. I also certify that the written reports appended are accurate and truthful.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 2, 2009



OFFICER STEVEN NASH

EXHIBIT C -

Wall Township Police

Incident/Investigation

Reports

(Attached)

MOVIC

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D

PROPERTY

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown
 ("OJ" = Recovered for Other Jurisdiction)

Officer/ID# NASH, S. (PATL, 1ST) (157)

Complainant Signature *[Signature]* #157

Printed By: W157, PATROL 2

Sys#: 20282

01/05/2004 13:29

INCIDENT WHICH

INCIDENT WHICH IS BASIS OF THIS SUIT

INCIDENT WHICH IS BASIS OF THIS SUIT

Incident Report Additional Offense List

Wall Township Police Department

OCA: 2004-00030

Offense List (Continued)

Counter	Offense Description	Statute	Completed/Attempted
# 4	POSS WEAPONS FOR UNLAWFUL PURPOSES (OTHE	2C:39-4D	Com
# 5	ENDANGERING THE WELFARE OF CHILD (SEXUAL	2C:24-4A	Com

R_CS6NC

Printed By: W157, PATROL_2 01/05/2004 13:25

Case# 2004-00030

[illegible]

LOKERSON, E.P. (119), LISTER, E. (142), MALONE, M.T. (153), MALONE, M.T. (153)

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REPORTING OFFICER NASH, S. TIVE

Wall Township Police Department

CCA

2004-00030

Victim

BODTMANN, ROBERT J

Offense

AGGRAVATED ASSAULT/ 3RD DEGREE- W/

Date / Time Reported

Sun 01/04/2004 12:13

THIS REPORT IS THE PROPERTY OF THE WALL TOWNSHIP POLICE DEPARTMENT. IT IS TO BE USED FOR OFFICIAL PURPOSES ONLY. IT IS NOT TO BE REPRODUCED OR DISTRIBUTED OUTSIDE THE WALL TOWNSHIP POLICE DEPARTMENT.

Should read: January 4, 2004

On December 4, 2003 at 1213 hours, this officer was dispatched to an officer wanted at 1737 Belmar Blvd. Before patrols arrival, this officer was advised that there was a subject at police headquarters requesting first aid. The subject requesting first aid was identified as Robert Bodtmann.

Upon patrols arrival, David Villari and his father, William Villari, was outside of the house. This officer asked Villari what was going on. Villari responded that Bodtmann came at him with a black steel pipe. Dispatched advised this officer that a window was broken out of Bodtmann's van. This officer then asked Villari how the window on the van was broke. Villari stated he broke the window out with a shovel as Bodtmann was trying to run Villari over. Villari was placed under arrest for Criminal Mischief. This officer placed Villari in the back of his vehicle and transported him to police headquarters. Villari did not want to give a statement. Villari was processed and placed into cell 1. William Villari did not want to give a statement.

Bodtmann reported he went to his previous residence, 1737 Belmar Blvd, with two of his kids, Christina (8yoa) and Joseph (6yoa), to pickup some of his things. Bodtmann said he then got out of his vehicle and opened the doors to the shed on the property when David Villari came out of the basement of the house. Villari started to curse and yell at Bodtmann in front of his children. Villari took a baseball bat from his father, William Villari, ran towards Bodtmann, and hit Bodtmann in the upper left arm. Bodtmann ran to his van and was struck in the head as Bodtmann tried to enter the van. Bodtmann started the vehicle and Villari broke out two windows on the driver's side. Bodtmann proceeded to drive around the house across the front yard. Bodtmann reports Villari ran towards the vehicle. Bodtmann then drove around the house again and then onto Belmar Blvd. Bodtmann drove to police headquarters. Bodtmann's vehicle had a broken windshield, 2 broken driver side windows, and multiple dents on the driver's side. Christina and Joseph were covered in glass from the broken windows. Joseph had a cut on his hand.

Bodtmann was transported to Jersey Shore Medical Center. Bodtmann gave a formal statement. Bodtmann was arrested for criminal mischief for driving across Villari's lawn two times.

A baseball bat with broken glass was found in the shed of 1737 Belmar Blvd. A shovel was recovered from the house.

Photographs were taken

David Villari was charged with the following:

- 2C:12-1b(2) Aggravated Assault (Robert Bodtmann)
- 2C:12-1b(3) Aggravated Assault (Joseph Bodtmann)
- 2C:12-1b(3) Aggravated Assault (Christina Bodtmann)
- 2C:24-4a Endangering the Welfare of a Child (Joseph Bodtmann)
- 2C:24-4a Endangering the Welfare of a Child (Christina Bodtmann)
- 2C:39-4d Possession of a Weapon for Unlawful Purpose
- 2C:17-3a(1) Criminal Mischief

Bail was set by Judge Broadbelt at \$175,000.

A court date of January 7, 2004

Reporting Officer: NASH, S.

Printed By: W157, PATROL_2 01/05/2004 13:25

Page 18 of 6

1/5/04

REPORTING OFFICER NARRATIVE

OCA

2004-00030

Wall Township Police Department

Victim

BODTMANN, ROBERT J

Offense

AGGRAVATED ASSAULT/ 3RD DEGREE- W/

Date / Time Reported

Sun 01/04/2004 12

Villari posted bail and was released.

Robert Bodtmann was charged with the following:

2C:17-3a(1) Criminal Mischief

Reporting Officer: NASH, S.

Printed By: W157, PATROL_2 01/05/2004 13 25

Page 5 of 6

5 157

/ 691-644-267

201704-24 HSNM01 0104M

W157 1325PM 01/05/2004 13 25

Incident Report Suspect List

Wal Township Police Department

OCA: 2004-00030

1 Name (Last, First, Middle) Villari, David						Also Known As				Home Address 1228 ANDOVER RD BRICK, NJ 08724 732-758-2603					
Business Address PBI INC. 201-247-4878 SALES BOULDER, COLORADO															
DOB.	Age	Race	Sex	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State.					
03/01/1965	38	W	M		507	180	BRO	02	MED	V43531567203652 NJ					
Scars, Marks, Tattoos, or other distinguishing features SCAR MIDL CHEST / GLOBLADDER REMOVED; SCAR LOWR STOMACH / APPENDIX REMOVED; SCAR RIGH KNEE / SLX SURGURY MARKS ON KNEE; SCAR RIGH KNEE / SLX SURGURY MARKS ON KNEE															
Reported Suspect Detail				Suspect Age		Race		Sex		Height		Weight		SSN	
Weapon, Type		Feature		Make		Model				Color		Caliber		Dir of Travel	
														Mode of Travel	
Veh Yr/Make/Model				Drs		Style		Color		Lic/St		VIN			
Notes														Physical Char	

R_CS81BR

Printed By W157, PATROL_2 01/05/2004 13:25

6 06 6

#157

W157:1 6002 61. 24H

Event Report

Event ID: 2004-0104-0078 Call Ref #: 263

Date/Time Received: 01/04/04 12:13:25

Rpt #: 2004-00030	Call Source: PHONE	Prime W157 Unit: NASH, STEVEN	Services Involved			
			LAW	EMS		
Location: 1737 BELMAR BLVD						
X-ST: BORDER BELMAR CANNETT LN			Jur: WTP Service: LAW Agency: WTP			
			St/Beat: PST2		District: 2	RA: N1
Business:			Phone: () -			
Nature: OFFICER WANTED			Alarm Lvl: 1		Priority: 9	Medical Priority:
Reclassified Nature:						
Caller: VILLARI, DAVID			Alarm:			
Addr:			Phone: (201) 247-4878		Alarm Type:	
Vehicle #:	St:	Report Only: No	Race:	Sex:	Age:	
Call Taker: W568			Console: WALLDISP1			
Geo-Verified Addr.: Yes			Nature Summary Code:	Disposition: REPT	Close Comments:	
Notes: See Event Notes Addendum at end of this report						

Times			
Call Received: 01/04/04 12:13:25	Time From Call Received		
Call Routed: 01/04/04 12:16:50	000:03:25	Unit Reaction: 000:05:05	(1st Dispatch to 1st Arrive)
Call Take Finished: 01/04/04 12:16:50	000:03:25	En-Route: 000:00:03	(1st Dispatch to 1st En-Route)
1st Dispatch: 01/04/04 12:16:56	000:03:31 (Time Held)	On-Scene: 001:55:09	(1st Arrive to Last Clear)
1st En-Route: 01/04/04 12:16:59	000:03:34		
1st Arrive: 01/04/04 12:22:01	000:08:36 (Reaction Time)		
Last Clear: 01/04/04 14:17:10	002:03:45		

Radio Log						Close	
Unit	Empl ID	Type	Description	Time Stamp	Comments	Code	User
W157	157	D	Dispatched	01/04/04 12:16:56	Stat/Beat: PST2		W568
W157	157	E	En-Route	01/04/04 12:16:59			W568
W157	157	A	Arrived	01/04/04 12:22:01			W568
W119	119	D	Dispatched	01/04/04 12:37:55	Stat/Beat: SGT		W568
W119	119	A	Arrived	01/04/04 12:37:57			W568
W119	119	C	Cleared	01/04/04 12:47:07		1008	Unit: W11
W142	142	D	Dispatched	01/04/04 13:21:01	Stat/Beat: TEU		W568
W153	153	D	Dispatched	01/04/04 13:21:04			W568
W153	153	E	En-Route	01/04/04 13:21:04			W568
W142	142	A	Arrived	01/04/04 13:21:06			W568
W153	153	A	Arrived	01/04/04 13:21:08			W568
W142	142	C	Cleared	01/04/04 14:16:57		1010	W565
W153	153	C	Cleared	01/04/04 14:17:05		1010	W565
W157	157	C	Cleared	01/04/04 14:17:10			REPT W565

				Event Log		Close	
Time	EmplID	Type	Description	Time Stamp	Comments	Code	User
	TR		Time Received	01/04/04 12:13:25	By: PHONE		W568
	ENT		Entered Street	01/04/04 12:13:31	1737 BELMAR BLVD		W568
	ENT		Entered Nature	01/04/04 12:13:36	OFFICER WANTED		W568
	ENT		Entered CallerNm	01/04/04 12:15:55	VALARO,ROBERT		W568
	ENT		Entered CallerPh	01/04/04 12:16:00	7322012474		W568
	CHG		Changed CallerPh	01/04/04 12:16:08	7322012474 -->		W568
	CHG		Changed CallerAddr	01/04/04 12:16:09	1737 BELMAR BLVD -->		W568
	ENT		Entered CallerPh	01/04/04 12:16:13	2012474878		W568
	ENT		Entered Remarks	01/04/04 12:16:50			W568
	FIN		Finished Call Taking	01/04/04 12:16:50			W568
	SP		Spawned	01/04/04 12:27:55	Spawned EMS event #200401040079		W529
	FF		Fast Forward to EMS	01/04/04 12:27:55	EMS		W529
	ARM		Added Remarks	01/04/04 12:36:08			W568
	CHG		Changed CallerNm	01/04/04 12:38:08	VALARO,ROBERT --> VALARO,DAVID		W568
	RPT		Requested Report#	01/04/04 13:21:10	WTPD Report #2004-00030		W568
	ARM		Added Remarks	01/04/04 13:24:47			W565
	CHG		Changed NOTES	10/04/05 11:21:07	sr [01/04/2004 15:17:38 W119]		W410
	ARM		Added Remarks	10/04/05 11:21:32			W410
	CHG		Changed NOTES	10/04/05 11:21:35	EXPUNGED (DO NOT GIVE OUT		W410

Event Notes Addendum

Notes: EXPUNGED (DO NOT GIVE OUT RECORDS) [10/04/05 11:21:32 W410]

sr [01/04/2004 15:17:38 W119]

Accused: David K Villari DOB 3/01/65 Wall 1228 Andover Brick NJ

Accused: Robert J Bodtmann DOB 5/31/63 416 Salem Ave Spring Lake NJ 732-280-5135

Villari and Bodtmann got into an altercation while Bodtmann went to 1737 Belmar Blvd. Bodtmann was hit in the left arm with a shovel. Villari then broke out two windows on Bodtmann's vehicle. Bodtmann's two children (Christina 8yoa 12/7/95 and Joseph 6yoa 6/15/97) were in the vehicle as Villari broke out the windows. Bodtmann then drove around Villari's house 2xs. Bodtmann then drove off the property to police headquarters to report the incident. Villari called the police at the same time to report the incident.

Bodtmann was transported to JSMC for a large welt on his left arm and minor bleeding from the face. Bodtmann was arrested for criminal mischief.

Villari was arrested for 3 counts of agg assault, 2 counts of endangering welfare of a child, criminal mischief for damage to the vehicle, possession of a weapon for unlawful purpose.

[01/04/2004 14:51:40 W157]

10-41

153 ESCORT ONE 41 TO JSMC [01/04/04 13:24:47 W565]

10-41 CRIMINAL MISCHIEF [01/04/04 12:36:08 W568]

NEIGHBOR TRIED TO RUN COMP OVER W/GREEN MINI VAN FLED ON BELMAR BLVD UNK DIRECTION
[01/04/04 12:16:50 W568]

EXHIBIT D -

Plaintiff

David K. Villari

Deposition Transcript

(Attached)

Page 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 CIVIL ACTION NO. 06-4 (FLW)

3 DAVID K. VILLARI, : CIVIL ACTION
4 Plaintiff, : Deposition Upon
5 vs. : Oral Examination
6 of
6 TOWNSHIP OF WALL, et als, :
7 Defendants. : DAVID K. VILLARI

8
9
10 TRANSCRIPT of the deposition of
11 DAVID K. VILLARI, called for Oral Examination in the
12 above-entitled action, said deposition being taken
13 pursuant to District Court Rules of Civil Procedure,
14 by and before NANCY A. BOUSELLI, a Certified Court
15 Reporter and Notary Public of the State of New
16 Jersey, at the offices of Chamlin, Rosen, Uliano &
17 Witherington, Esqs., 268 Norwood Avenue, West Long
18 Branch, New Jersey, on Friday, February 1, 2008,
19 commencing at 10:30 in the forenoon.

20
21
22 RICHARD F. DURIK
23 Certified Court Reporters
24 5025 Macmill Road
25 Farmingdale, New Jersey 07727
(732) 938-5906

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1 LITIGATION SUPPORT PAGE
2 Direction To Witness Not To Answer:
3 Page (None) Line
4 Request For Production Of Documents
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18 61 1
19 Complaints
20 66 24
21 Criminal Charges
22 Information To Be Furnished
23 Page (None) Line
24 Questions Marked For A Ruling
25 Page (None) Line

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136, 105

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1 APPEARANCES:
2 LAYNIS.ROTHBORT,ESQ.
3 49 Oval Road
4 Millburn, New Jersey 07041
5 Attorney for Plaintiff
6 CHAMLIN, ROSEN, ULIANO & WITHERINGTON, ESQS.
7 BY: JOHN BAZZURRO, ESQ.
8 268 Norwood Avenue
9 West Long Branch, New Jersey 07764
10 Attorneys for Defendant, Fifeild
11 WILLIAM J. GEARTY, ESQ.
12 301 Morris Avenue, Second Floor
13 Spring Lake, New Jersey 07762
14 Attorney for Defendant, Nash

15
16
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19 DAVID K. VILLARI
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1 DAVID K. VILLARI, 1123 Breezy Knoll
2 Street, Minneola, Florida 34715, having been duly
3 sworn according to law by the Officer, testified as
4 follows:
5
6 DIRECT EXAMINATION
7 BY MR. BAZZURRO:
8 MR. BAZZURRO: Before we start I would
9 like to place a statement on the record. Mr.
10 Bonello, who represents the Township as well as a
11 number of police officers in this matter, has advised
12 that he was unavailable on this date. Given the
13 difficulty in getting the Plaintiff because he is in
14 Florida and representation of Plaintiff's counsel
15 that he's only available on January 31 and today,
16 February 1, it was agreed by defense counsel,
17 including Mr. Bonello, that we would proceed with the
18 Plaintiff's deposition without Mr. Bonello and that
19 we could proceed without him and he's fully aware
20 that the deposition is taking place today and, with
21 that, we can go forward with the deposition.
22 Q. Having said that, good morning, Mr.
23 Villari.
24 A. Good morning, sir.
25 Q. We're here today for the purposes of

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1 A. But the whole environment on that day,
 2 I was treated like I was a criminal.
 3 Q. But you weren't arrested, were you?
 4 A. No, but just the whole attitude,
 5 telling me, "If we catch you on your property you're
 6 going to get arrested," and I have three other
 7 tenants living there and as a landlord I have to take
 8 care of their needs, but I couldn't go to my property
 9 because I had the tenants threatening me, the
 10 Bodtmanns, and the police threatening me if my father
 11 or I got caught on there we were going to get
 12 arrested.
 13 Q. What exactly did the police officer say
 14 concerning your returning to the property? Do you
 15 recall his exact words?
 16 A. "If I catch you there, I will arrest
 17 you. If your father is caught there, he will be
 18 charged with trespassing."
 19 Q. Okay. He used the word "there." He
 20 didn't say "on your property." He said, "If you're
 21 caught there, you'll be arrested"?
 22 A. Meaning 1737 Belmar Boulevard.
 23 Q. His exact words were "there"?
 24 A. I believe so.
 25 Q. Okay. And you took that to mean at the

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1 property?
 2 A. I questioned it. I said, "Are you
 3 telling me I can't go to my property on Belmar
 4 Boulevard?" And he said, "Yes."
 5 Q. Okay. You specifically asked him,
 6 "Does that mean that I can't go to my property"?
 7 A. Yes.
 8 Q. And he said yes?
 9 A. Uh-huh.
 10 Q. Yes? You have to say yes.
 11 A. Yes. Sorry.
 12 Q. And did you ask him why you were
 13 prohibited from going back to the property you owned?
 14 A. I asked him. I didn't really get an
 15 answer from him at all.
 16 Q. Okay.
 17 A. I thought the whole incident was
 18 strange.
 19 Q. Did you ask to speak to any other
 20 police officers such as the Captain or a Chief or
 21 Sergeant or anything else?
 22 A. After we got the report from that
 23 incident, my social security number and address was
 24 given out to the Bodtmanns and I asked the
 25 Sergeant -- I don't know the Sergeant. I came back

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1 another day. I said, "You guys didn't block out my
 2 address, my home address and my social security
 3 number," and the Sergeant verified it and he asked me
 4 to bring some information back because I didn't have
 5 everything with me. I did and the next time I went
 6 back in -- the Sergeant was polite to me. He said,
 7 "Bring the information back." I believe the next
 8 time is the first time I ran into Fifield, but I
 9 can't be sure of that and I said, "I need to see the
 10 Sergeant," and he started yelling at me; "You could
 11 leave it with me." I said, "The Sergeant asked me to
 12 give it to him personally," and basically he was
 13 questioning me, who am I asking for a Sergeant, how
 14 dare I ask for a Sergeant.
 15 Q. Okay. Let me go back. You just gave
 16 me a lot of information. You read the report made on
 17 September 3, 2003, yes?
 18 A. Yes.
 19 Q. And did you read it on or about
 20 September 3, 2003?
 21 A. There and then when I got home.
 22 Q. Okay. And was that report, the
 23 contents of that report, was it accurate?
 24 A. From what I believe.
 25 Q. Okay. So the officer, badge number

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1 151, who said, "Don't go back to the property
 2 otherwise you'll be arrested," actually took a
 3 report?
 4 A. Yes.
 5 Q. And what you said to him was in the
 6 report about the threats that Cindy and Robert had
 7 made to you?
 8 A. Yes, sir.
 9 Q. Okay. Did he say anywhere in that
 10 report that you, meaning you, should not return to
 11 the property otherwise you'll be arrested?
 12 A. I do not believe so. That was a verbal
 13 order my him.
 14 Q. Okay.
 15 A. Command, if you want to say it.
 16 Q. And how did you find out that your
 17 social security number and address were given out to
 18 the Bodtmanns?
 19 A. Because I sent a copy I believe to
 20 Layni at the time and Layni said, "You know they
 21 didn't block out everything," and then I went back
 22 and talked to the Sergeant to make sure they blocked
 23 it out and the Sergeant confirmed because when I
 24 asked for a copy from the people, nothing was blocked
 25 out and I said, "Aren't you supposed to block out

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1 before you swung your shovel with the intent of
 2 hitting the front driver's side window?
 3 A. I don't know exactly. Less than 30
 4 seconds.
 5 Q. Okay. Was it more than five seconds?
 6 A. I'm not sure.
 7 Q. Okay. And did his van move at all
 8 between the time you swung and struck the front
 9 driver's side window and the time you swung and
 10 struck the rear driver's side window?
 11 A. I'm not sure.
 12 Q. Okay. Did at any point in time you or
 13 your father call the police before you struck the van
 14 with the shovel?
 15 A. No.
 16 Q. Did either you or your father have a
 17 cell phone on you?
 18 A. The phone was in the car, so it wasn't
 19 on the body.
 20 Q. Okay. And after you swung, struck and
 21 broke the rear driver's side window, what happened
 22 next?
 23 A. Robert Bodtmann took off.
 24 Q. Okay. And did he go in the same
 25 direction he had gone the prior two times?

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1 A. Yes.
 2 Q. Did you believe he was coming back?
 3 A. I wasn't sure and I told my father,
 4 Let's walk towards the house, and that's when I
 5 walked -- can I have a pen, please? There is a porch
 6 here (indicating).
 7 Q. Okay.
 8 A. And you could see around the front, so
 9 I looked around the front and I told my father, "Stay
 10 back here because, you know, I looked and I think he
 11 left this time, Dad," and we walked and I go, "You
 12 got the cell phone?" He said, "No. I thought he had
 13 it and it was in the car."
 14 Q. Okay. What did you do? Did you
 15 ultimately get the cell phone?
 16 A. Yes.
 17 Q. What did you do when you got the cell
 18 phone?
 19 A. Called the Wall police immediately.
 20 Q. What did you tell them when you called
 21 them?
 22 A. That I was almost run over. I'm not
 23 sure if I said by a former tenant or I said Robert
 24 Bodtmann. He came after me and tried to run my Dad
 25 and myself over. Can you please send help?

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1 Q. How much time elapsed between the time
 2 that Bodtmann left and the time you made that phone
 3 call to the police department?
 4 A. I would say a couple of minutes; two or
 5 three minutes. I mean, I ran up front to see and
 6 that's it. Can I get a drink of water, please?
 7 Q. Sure. Absolutely.
 8 (Recess taken.)
 9 Q. When you called Wall Township Police
 10 Department to complain about the incident, did you
 11 have any conversations with any of the police
 12 officers?
 13 A. The dispatcher.
 14 Q. Okay. Do you know who the dispatcher
 15 was?
 16 A. No, I don't.
 17 Q. And what did they tell you?
 18 A. Stay where you are.
 19 Q. Okay. Did officers ultimately arrive
 20 at the house?
 21 A. Yes.
 22 Q. How many officers and how many cars?
 23 A. One car initially was Officer Nash.
 24 Q. Okay.
 25 A. And I believe about 15 or 20 minutes

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1 later Officer Fifield.
 2 Q. And when Nash arrived, did you speak
 3 with him?
 4 A. Yes, I did.
 5 Q. What did you tell Nash happened?
 6 A. I told him what happened. I handed him
 7 the shovel and told him exactly where it happened.
 8 He looked in the house. I showed him it was vacant.
 9 I showed him the front yard where there was divots
 10 running around the house, two sets. I walked him
 11 back and told him where the incident happened.
 12 Officer Nash was a gentleman. I'm like, the first
 13 time a nice cop came without yelling at me from Wall.
 14 Q. And so he took your complaint,
 15 basically what you told him happened?
 16 A. He didn't write anything down, I
 17 believe, but he took the shovel and we basically went
 18 over what happened. I told him I called the
 19 dispatcher and very nice, very polite. He was a
 20 gentleman and I told him my father wasn't feeling
 21 well. He asked if my father needed any help. He
 22 said no and we were in the back when Fifield showed
 23 up and --
 24 Q. Before we get to that, had you ever had
 25 any conversations with Officer Nash before this day?

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1 A. None that I believe.
2 Q. Okay. When you were striking the
3 vehicle with the shovel, did you strike Mr. Bodtmann
4 with the shovel?
5 A. Not that I know of.
6 Q. Okay. Was it possible that you struck
7 him when you struck the front window?
8 MR. BAZZURRO: Don't shake your head.
9 You've been doing it all deposition. I haven't said
10 anything. Your client is looking at you. You may
11 not know your client is looking at you, but he's
12 looking at you.
13 Q. Is it possible that you struck Mr.
14 Bodtmann with the shovel when you broke the front
15 driver's side window of the van?
16 A. It could have.
17 Q. Did you strike any other portion of the
18 van other than the front windshield and the two
19 windows that we discussed?
20 A. Not that I recall.
21 Q. Do you know whether or not there was
22 any dents on the body portion of the van as opposed
23 to windows from the shovel that you used to strike
24 the van?
25 A. Not that I recall.

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1 Q. Is it possible that there could have
2 been dents in the body portion of the van other than
3 the windows?
4 A. I'm not sure.
5 Q. Okay. It's possible that that could
6 have happened?
7 A. It could have happened. I'm not sure,
8 sir.
9 Q. Okay. While you were talking to
10 Officer Nash did Officer Nash receive a call from
11 dispatch, either by way of cell phone or by way of
12 radio, if you know?
13 A. He never that I know of got back in the
14 car or I believe they carry a walkie-talkie. I never
15 saw him grab the radio from his shoulder and he never
16 went back into the car that I know of.
17 Q. Okay. And Officer Fifield, what
18 happened when he arrived?
19 A. Oh, he was arrogant, screaming and
20 yelling at my father and I and bumping into me.
21 Q. Well, let me --
22 A. I'm going too fast.
23 Q. When he first arrived, did he first
24 speak to you or did he first speak to Officer Nash?
25 A. Oh, he came right towards me.

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1 Q. And what was the first thing he said to
2 you?
3 A. What the fuck did you do? And I said,
4 "I'm explaining to Officer Nash what happened," and
5 he was in my face and bumping into me and I kept on
6 backing up like this (indicating). Sorry.
7 Q. I understand.
8 A. Backing up and he kept on coming into
9 me and bumping into me. He goes, "What's your
10 fucking problem?" I said, "I don't want no problem
11 with you," and then I saw his badge number and I
12 said, "Dad, don't say another word. We're in
13 trouble."
14 Q. Why did you say that?
15 A. Because of the threat on December 17.
16 Fifield said to me, "If I catch you on the property
17 you're going to get arrested," and Fifield, I go, "I
18 don't want no problems with you and I don't
19 understand." My father said, "Please stop bumping
20 into my son." "Fuck you; two fucking stupid
21 guineas," and all Officer Nash did, looked down in a
22 sense of embarrassment. He was an officer that was a
23 gentleman; didn't make any judgment and then you had
24 this like a gorilla coming after me, bumping into me,
25 seeing if I was going to react to him and the next

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1 thing, he goes, "Get up against the patrol car;
2 you're under arrest."
3 Q. Before we get there, how did he bump
4 into you? Tell me how exactly he bumped into you.
5 Did he walk by into you and brush against you?
6 A. No, he came in and bumped into me like
7 that (indicating) and then I stepped back and he
8 caught me with the shoulder a second time too.
9 Q. So you're saying that he walked up to
10 you face-to-face and put his chest on to your chest
11 and bumped you?
12 A. Yes.
13 Q. And he did it again, but the next time
14 he used his shoulder?
15 A. Yes.
16 Q. What shoulder did he use, right or
17 left?
18 A. I don't recall because I kept on
19 stepping back to avoid contact.
20 Q. Which part of your body did his
21 shoulder come into contact with?
22 A. I believe it was my left.
23 Q. Okay. So his shoulder came into
24 contact with your left shoulder?
25 A. Yes.

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1 Q. Okay. And he called you a fucking
2 stupid guinea?
3 A. He called both me and my father a
4 fucking stupid guinea and that's when I -- sorry.
5 Q. Go ahead. That's fine.
6 A. I noticed his badge number and I said,
7 "Dad, don't say another word. I'm in trouble."
8 Q. And how long after you said that did he
9 place you under arrest?
10 A. Probably about two or three minutes.
11 Q. Okay. Did he actually place you under
12 arrest?
13 A. Yes.
14 Q. Did he say he was placing you under
15 arrest?
16 A. He said, "Lean against the car; put
17 your hands behind your back; you're under arrest."
18 Q. Where on the property did this take
19 place? First of all, I want to know where you were
20 when Officer Fifield first arrived.
21 A. The back of the house. Do you want me
22 to draw it?
23 Q. Just show me.
24 A. Okay. Back here (indicating).
25 Q. Okay. So you're indicating right near

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1 the "P" in "parking spaces" in the back of the house?
2 A. Yes. Nash's car was parked here and
3 Fifield came around and parked right here
4 (indicating).
5 Q. Fifield drove actually on the back of
6 the house to the gravel dirt driveway?
7 A. Yes.
8 Q. And you were standing by the "P" in
9 "parking spaces"?
10 A. Yes.
11 Q. Okay. And when he placed you under
12 arrest he told you to lean up against his car?
13 A. Yes.
14 Q. And did he frisk you at that point?
15 A. I don't recall.
16 Q. Did he place handcuffs on you?
17 A. Yes, he did.
18 Q. What was your father doing at that
19 point?
20 A. My father asked him, Why are you
21 placing him under arrest? And he said, "Shut the
22 fuck up."
23 Q. And did he ask you to get into the car?
24 A. He put me in his patrol car.
25 Q. Did he and Nash have any conversations

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1 up to that point in time?
2 A. Well, while I was in the car they
3 walked towards the shed and I saw Officer Fifield
4 look into the shed and then he came back and I was
5 surprised. Nash took me out of the patrol car.
6 Q. Okay. When Officer Fifield was walking
7 back from the shed did he have anything with him that
8 he had taken from the shed?
9 A. No.
10 Q. Why did Nash take you out of the patrol
11 car?
12 A. I have no clue, but instincts, he was
13 protecting me.
14 Q. What did Nash do when he took you out
15 of the patrol car?
16 A. He said, "You're coming with me," and
17 we walked back to his car. He put me in his car and
18 Fifield was continuing yelling at my father and then
19 at one point I heard him, he was swearing at my
20 father, "You're fucking stupid; fucking dumb
21 guineas. I got your fucking son," and he goes,
22 "Remember, I didn't fucking yell at you," and
23 pointed, and I go to Nash, "Can you please tell him
24 to stop? My father is not a healthy man," and Nash
25 goes, "Can you please leave him alone. He's not a

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1 healthy gentleman. He's not feeling well." "I don't
2 give a fuck if he dies or gets sick."
3 Q. So Nash said that to Fifield to stop
4 and Fifield said, I don't care?
5 A. He didn't give a fuck if he died or got
6 sick; "He's not my fucking problem" and then Nash
7 took me -- I was in the car already and he asked,
8 "Are you okay?" I'm like, "Yeah," and he said,
9 "Please don't say anything. I have to take you in
10 now since you're under arrest," and he did ask before
11 I got to the police station where you pulled into the
12 back, "Are you okay?" And I said -- I basically
13 said, "I basically don't understand why I'm under
14 arrest," and he said, "Don't worry; everything will
15 be okay."
16 Q. So Nash was pretty good to you?
17 A. He was a gentleman.
18 Q. All right. Who placed handcuffs on
19 you, Nash or Fifield?
20 A. Fifield.
21 Q. Did he injure you in any way when he
22 placed handcuffs on you?
23 A. He put them on tight.
24 Q. Did he injure you in any way?
25 A. No.

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1 correct?
 2 A. Correct.
 3 Q. Do you know if the lead pipe was ever
 4 found at the house or anywhere?
 5 A. I found the lead pipe at the house,
 6 which I believe it was.
 7 Q. Okay. You said you gave that to some
 8 attorney, right?
 9 A. Yes, Angelo Bisceglie,
 10 B I S C E G L I E.
 11 Q. Do you know if a baseball bat was ever
 12 recovered at the house?
 13 A. I was told it was.
 14 Q. Did you ever see it?
 15 A. No, and I heard it was recovered.
 16 Q. You never saw it, though?
 17 A. No.
 18 Q. Would there have been a baseball bat in
 19 the shed?
 20 A. I'm not sure.
 21 Q. As you sit here today, do you recall
 22 using a baseball bat to strike the Bodtmann vehicle?
 23 A. Never used a baseball bat.
 24 Q. Do you know if Mr. Bodtmann was charged
 25 with any criminal charges from the day of the

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1 incident?
 2 A. Criminal mischief, I believe.
 3 Q. Do you know what that is?
 4 A. A misdemeanor.
 5 Q. Do you know what it's for; like what
 6 the violation is that triggered that?
 7 A. They said because he went across my
 8 grass, and I was told that by the lawyers.
 9 Q. Do you know -- did you ever find out
 10 whether or not Bodtmann's children were injured as a
 11 result of your striking the vehicle with the shovel?
 12 A. The lawyer just told me.
 13 Q. What is your understanding of what
 14 injuries the children suffered?
 15 A. I don't recall.
 16 Q. After your father returned with the
 17 \$17,500 check, were you released?
 18 A. Yes.
 19 Q. Who released you?
 20 A. Oh, I don't know the officer.
 21 Q. You don't know his name?
 22 A. No.
 23 Q. Do you know his badge number?
 24 A. No, I don't.
 25 Q. And I'm assuming you walked out of the

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1 police department that night?
 2 A. Yes.
 3 Q. Your Dad drove you home?
 4 A. Yes.
 5 Q. Did you have any other contact with any
 6 other Wall Township police officers while you were
 7 there that day other than what you have told me
 8 already?
 9 A. Officer Nash, after I was released, in
 10 the Wall parking lot when we were walking over to our
 11 car.
 12 Q. Okay. What time was that,
 13 approximately?
 14 A. I believe it was around nine o'clock at
 15 night. I lost track of time.
 16 Q. Okay. And Officer Nash approached you
 17 and your Dad?
 18 A. Yes, he was in his patrol car.
 19 Q. And what did he say?
 20 A. And I looked at him and he said, "Are
 21 you okay?" And I said, "Thanks a lot." He said,
 22 "For what?" I said, "For all the charges you placed
 23 on me and \$175,000 bail with no ten percent," and he
 24 said, "I'm sorry. I didn't realize they were going
 25 to do that to you."

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1 Q. Okay. When you said "thanks a lot,"
 2 were you being sarcastic?
 3 A. Yes, I was very upset at that point.
 4 Q. Okay. So despite the fact that Nash
 5 was what you said the most polite Wall Township
 6 police officer to you to date, you were sarcastic
 7 when you walked out?
 8 A. Yes, because I was shocked. He was a 3
 9 gentleman. He was very polite and I never dreamed he
 10 would have done that to me and to this day I still
 11 don't believe he pressed the charges. I believe it's
 12 Fifield.
 13 Q. Did you ever see a copy of the criminal
 14 complaint?
 15 A. Yes.
 16 Q. Do you know who signed it?
 17 A. Officer Nash.
 18 Q. Did you have any conversations with
 19 Officer Nash wherein he told you Officer Fifield made
 20 him sign the complaint?
 21 A. No.
 22 Q. Any other contact with any other police
 23 officers while you were there that day?
 24 A. I overheard stuff.
 25 Q. Well, that's contact.

EXHIBIT E

WILLIAM J. GEARTY, ESQUIRE

301 Morris Avenue

Spring Lake, New Jersey 07762

Telephone: (732) 449-1114

Facsimile: (732) 449-7292

Attorney for defendant, Officer Nash

wgearty@verizon.net

DAVID K. VILLARI,

Plaintiff,

v.

TOWNSHIP OF WALL, TOWNSHIP OF
WALL POLICE DEPARTMENT, SCOTT
FIFIELD, S. NASH, BADGE #157,
SERGEANT PROMPHREY, JOHN DOE,
being a fictitious name, WEARING BADGE
#151, SERGEANT E. P. LOKERSON,
BADGE #119, E. LISTER, BADGE #142,
MICHAEL MALONE, BADGE #153, John
Does #1 - 10,

Defendants.

: UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

:

Civil Action No. 06-CV-4 (FLW)

:

U.S. Magistrate John J. Hughes

:

Civil Action

:

CERTIFICATION OF

:

WILLIAM J. GEARTY, ESQUIRE

:

:

:

:

:

William J. Gearty, of full age, upon his certification, deposes and says:

1. I am an attorney at law of the State of New Jersey. I represent the defendant
Officer Steven Nash in the encaptioned matter.

2. I have reviewed the transcript of the deposition of plaintiff, David K. Villari,
which appears as **Exhibit D** herein.

3. I have selected certain passages from that transcript for reproduction. The

selections from the transcript which I reproduce are accurate, complete reproductions of the original text of the deposition transcript.

CERTIFICATION

I hereby certify that the foregoing statements made by me are true. I also certify that the written reports appended are accurate and truthful.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ William J. Gearty

Dated: January 2, 2009

WILLIAM J. GEARTY, ESQUIRE

DAVID K. VILLARI,	:	UNITED STATES DISTRICT COURT
	:	DISTRICT OF NEW JERSEY
Plaintiff,	:	
	:	Civil Action No. 06-CV-4 (FLW)
v.	:	
TOWNSHIP OF WALL, TOWNSHIP OF	:	
WALL POLICE DEPARTMENT, SCOTT	:	
FIFIELD, S. NASH, BADGE #157,	:	
SERGEANT PROMPHREY, JOHN DOE,	:	
being a fictitious name, WEARING BADGE	:	
#151, SERGEANT E. P. LOKERSON,	:	
BADGE #119, E. LISTER, BADGE #142,	:	
MICHAEL MALONE, BADGE #153, John	:	
Does #1 - 10,	:	
Defendants.	:	

BRIEF OF DEFENDANT STEPHEN NASH

IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

WILLIAM J. GEARTY, ESQUIRE
Attorney for Defendant, Stephen Nash
301 Morris Avenue
Spring Lake, NJ 07762
(732) 449-1114

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PROCEDURAL HISTORY

Plaintiff brings this action under 42 U.S.C. § 1983, which provides for a civil action against persons who under color of law deprive a citizen of a federal constitutional right. Plaintiff alleges jurisdiction pursuant to 28 U.S.C. § 1331 and 13345. In the statement of facts in his complaint, he refers to the defendant Nash, at all relevant times, as a police officer employed by Wall Township and acting under color of law. This defendant will concede those allegations.

All the allegations made by plaintiff against the defendant Steven Nash occurred on January 4, 2004. In his complaint against other persons, plaintiff alleges events on dates other than January 4. None of these refer to the defendant, Steven Nash. In that Statement of Fact, the limited allegations against Nash are seen in Paragraph Six: “But Nash removed plaintiff from Fifield’s vehicle and placed him in the vehicle he had driven to the scene.”

In Paragraph 64, plaintiff alleges that, “Defendants Nash and Fifield knew that Bodtmann no longer resided at 1737 Belmar Boulevard and that he had no right to enter said property on January 4, 2004.”

In his first count, he claims discrimination based on his national origin, allegedly in violation of 42 U.S.C. § 1983.

In Count Two, plaintiff alleges malicious prosecution.

In the Third Count, he alleges that remarks of a co-defendant deprived him of property, which constituted a violation of the Fourteenth Amendment rights of plaintiff.

In the Fourth Count, he alleges a false arrest in violation of the Fourth Amendment. He brings the suit under § 1983.

Under Count Five brought under § 1983, he alleges a conspiracy to bring a malicious

prosecution against him.

In Count Six, he makes no allegation against this defendant.

In Count Seven, he alleges that Nash made inappropriate remarks about his ethnic background violating his rights under Article I, Paragraphs 1, 5 and 22 of the Constitution of the State of New Jersey.

In the Eighth Count, he alleges discrimination against him, in violation of the New Jersey Law Against Discrimination.

In the Ninth Count, he makes no allegation as to Nash.

In the Tenth, he claims an intentional infliction of emotional harm.

In the Eleventh, he alleges a negligent affliction of emotional harm.

The matter has progressed slowly through the trial court. Depositions have been taken of all parties.

All defendants make motions for summary judgment.

STATEMENT OF FACTS

The facts relied upon by this defendant are set forth in his Statement of Material Facts as to Which There is No Genuine Issue, which is seen as **Exhibit A** appended to the moving papers. This defendant adopts those facts for purposes of this brief and argues thereon.

Stated briefly, Steven Nash was a police officer employed by the Township of Wall, New Jersey on January 4, 2004. He had never seen plaintiff, Villari, or had any dealing with him prior to the affecting of the Villari arrest on January 4, 2004.

On that date, Officer Nash was on routine patrol. He was dispatched to 1737 Belmar Boulevard, Wall, New Jersey. He was advised by the dispatcher that a person on the property had broken the windows out of an automobile operated by one Robert Bodtmann.

The evidence was that there were two side window broken out as well as the front windshield on the driver's side of the car.

Officer Nash was the first officer on the scene. He spoke to Villari and his father. Villari denied the fact that he had struck Bodtmann with a baseball bat. He did indicate, however, that he took a shovel and broke out the front windshield and two windows on the driver's side of the Bodtmann vehicle. Nash had been advised by the dispatcher that as a result of this Joseph Bodtmann had been taken to the hospital for treatment and one of the children seated in the back of the Bodtmann vehicle was also taken to Jersey Shore Medical Center for treatment of the glass inflicted cut.

Nash rather dispassionately asked Villari about the incident. Villari admitted that he did, in fact, break out the windows with a shovel. He produced the shovel as evidence.

On the basis of his statement and the information received from the dispatcher, Nash told Villari that he was under arrest. He placed him temporarily in the squad car operated by co-defendant, Fifield. Since this was his arrest, he removed him from that car, put him in the backseat of his patrol car and drove without incident to Wall Township Police Headquarters. While there, Villari and his father indicated they would not give a statement. They didn't. Villari, at headquarters after the investigation had proceeded, was charged with other offenses. They were:

N.J.S.A. 2C:12-1b(2)	Aggravated Assault (Robert Bodtmann)
N.J.S.A. 2C:12-1b(3)	Aggravated Assault (Joseph Bodtmann)
N.J.S.A. 2C:12-1b(3)	Aggravated Assault (Christina Bodtmann)
N.J.S.A. 2C:24-4a	Endangering the Welfare of a Child (Joseph Bodtmann)
N.J.S.A. 2C:24-4a	Endangering the Welfare of a Child

(Christina Bodtmann)

N.J.S.A. 2C:39-4d

Possession of a Weapon for Unlawful Purpose

Following a delay caused by the necessity to raise bail, plaintiff was released from police headquarters. Originally, before the suit, Villari made claim that the Monmouth County Prosecutor had discriminated against him and had violated his rights. At a subsequent date, Villari and Bodtmann appeared in Court and dismissed their charges one against the other.

When Villari started his suit, he did not bring a cause of action against the Monmouth County Prosecutor, nor did he bring any action against Bodtmann whom he alleged assaulted him with a motor vehicle and put him in fear of death. Villari claims emotional upset. He also claims financial loss. The undisputed facts show that there was no loss in the property because in addition to the rent, which he did receive, he sold the property for substantially more than he purchased it for. Strangely, he does concede that when Officer Nash arrested him, he was nothing but a perfect gentleman who was nice and who was polite. **See Exhibit A, Paragraph 5; Exhibit D.**

POINT ONE

**IN THE ABSENCE OF A GENUINE ISSUE OF
MATERIAL FACT, AS HERE, SUMMARY
JUDGMENT SHOULD BE GRANTED**

The standard to determine a motion for summary judgment is to be found in Federal Rules of Civil Procedure 56(c). This rule states that the District Court shall render summary judgment forthwith

“...if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law....”

The standard has been interpreted by the Supreme Court in three cases, one of which is *Anderson v. Liberty Lobby*, 477 U.S. 242, 91 L.Ed. 2d 202 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. The requirement is that there be no genuine issue of material fact. *Anderson v. Liberty Lobby*, supra, 477 U.S. at 211, 91 L.Ed. 2d at 248.

Our District Court has, in applying this standard, found that a motion for summary judgment may be granted unless the evidence, construed in favor of the non-moving party, is sufficient for a reasonable jury to return a verdict for that party. *Rosefielde v. Falcon Jet Corp.*, 701 F.Supp. 1053, (DNJ 1988) 1060. Any inferences to be drawn from the underlying facts contained in evidentiary sources submitted to the trial court must be viewed in a light most favorable to the party opposing the motion *Chipollini v. Spencer Gifts*, 814 F.2d 893, 900 (3 Cir. 1987).

An alleged factual dispute, in a motion for summary judgment, must be genuine.

This is to be taken to mean that the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, supra*, 477 U.S. at 211-12, 91 L.Ed. 2d at 248. Thus, as stated before, the fact or facts must have an affect on the outcome of the case, not merely allegations designed to attempt to defeat the motion. The burden to demonstrate the absence of a material fact issue remains with the moving party regardless of which party would have the burden of persuasion at trial. See *Chipollini v. Spencer Gifts, supra*, 814 F.2d at 896:

“If, however, the non-movant will bear the burden of persuasion at trial, the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if reduced to admissible evidence, would be insufficient to carry the non-movants’ burden of proof at trial.”

In conclusion, the granting of summary judgment is appropriate against “a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Rosefield v. Falcon Jet Corp.*, *supra*, 701 F.Supp. at 1060.

It is clear from the reasons set forth in this brief that there is no genuine disagreement over a material fact to require the denial of this motion. Additionally, drawing all inferences in favor of the non/movant, it is clear the defendant Nash is entitled to summary judgment as a matter of law.

POINT TWO

THE COUNTS CHARGING FALSE ARREST AGAINST DEFENDANT NASH SHOULD BE DISMISSED UNDER THE DOCTRINE OF QUALIFIED IMMUNITY

Police officers and other government officials can defend against a Section 1983 Civil Rights claim by establishing that they are eligible for a qualified or “good faith” immunity.

In cases involving an alleged unlawful arrest, search or seizure, the Supreme Court has interpreted Section 1983 to limit the rights of plaintiffs and to encourage disposition of the actions as a matter of law. See, *Malley v. Briggs*, 475 U.S. 335 (1986); *Anderson v. Creighton*, 483 U.S. 635 (1987). The Supreme Court has supported granting summary judgment “on the basis of qualified immunity in suits against government officials as a means of screening out insubstantial claims and shielding government officials from the costs and burdens of trial and discovery.” *Russell v. Coyle*, 266 N.J. Super. 651, 658 (App. Div. 1993).

In order to defend a Section 1983 claim, the police officer must establish either that he acted with probable cause, or, if probable cause did not exist, that a reasonable police officer could have believed in its existence. *Anderson*, at 641. See, *Kirk v. City of Newark*, 109 N.J. 173, 184 (1988). Applying this objective standard, the Supreme Court in *Malley* stated that, “if officers of reasonable competence could disagree on this issue, immunity should be recognized.” 475 U.S. 335, 341 (1986). For this purpose, the objectively reasonable standard is the same standard as is generally applicable for suppression motions in criminal cases. *McKinney v. East Orange Municipal Corp.*, 284 N.J. Super. 639, 648 (App. Div. 1995) (citing *Howlett v. Rose*, 496 U.S. 356, 375-378 (1990)).

Further, a plaintiff must establish that the right allegedly violated was a “clearly established” right at the time of defendant’s action. If the plaintiff cannot prove this then the action against the police officer must be dismissed no matter that a factual dispute may exist. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). “Clearly established” is defined as “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson*, at 640.

The test for qualified immunity is whether the police officer’s conduct was objectively reasonable in light of the facts then known. The Supreme Court in *Harlow v. Fitzgerald* stated that, “government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” 457 U.S. 800, 818 (1987). Several years later, the Supreme Court held that police officers should not be held personally liable for actions they reasonably believed to be lawful. *Anderson*, at 641. See, *Russell, supra*, at 658. The Court continued, holding that the government will be shielded from civil damages liability “as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.” *Anderson*, at 638. A plaintiff’s subjective belief about the police officer’s actions is irrelevant. *Id.*, at 641. In addition, bare allegations of malice, without more proof, should not deprive a police officer of the qualified immunity. *Harlow, supra*, at 817-818.

Since police officers are allowed discretion when determining if probable cause exists, they are also allowed “ample room for mistaken judgments.” *Malley*, at 343. Claims of Section 1983 violations for lack of probable cause will stand, “only where the warrant

application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable.” *Id.*, at 344-45.

In the instant matter, the evidence supports the conclusion that Nash had probable cause to affect the Villari arrest. He had information concerning the damage done to the Bodtmann vehicle. He had information concerning the injury to the children caused by the flying glass. He spoke to Villari in terms and in a manner that Villari has characterized as “nice, polite and he was a gentleman.” During that discussion, Villari conceded that he indeed did smash the three windows in the car. Based on the knowledge received from the dispatcher and based on the candid admission of the assault by Villari, there was a probable cause to arrest.

If for some reason, however, it could be argued that there was a question about the probability of the cause, the doctrine set forth above shows a good faith immunity, certainly. Nash would certainly have cause to believe that probable cause did indeed exist. If Nash would meet all of the tests set forth above.

It is suggested, however, that the good faith immunity which is relied upon is probably unnecessary because in the objective order there was compelling and substantial evidence before Nash to justify him in arresting the Bodtmanns’ assailant.

POINT THREE

**PLAINTIFF'S CLAIM OF MALICIOUS
PROSECUTION CANNOT BE MAINTAINED
UNDER 42 U.S.C. § 1983**

Count Two of plaintiff's complaint alleges a cause of action sounding in malicious prosecution. In Count Five, he alleges a conspiracy to commit the malicious prosecution. It is brought in the Federal Court under 42 U.S.C. § 1983.

For four reasons, the cause of action cannot be maintained.

A malicious prosecution action requires proof that (1) the criminal action was instituted by the defendant against plaintiff; (2) that it was actuated by malice; (3) that there was an absence of probable cause for proceeding; and (4) that it was terminated favorably to defendant, *Lind v. Schmid* 67 N.J. 255 (1975). See also *Williams v. Page* 160 N.J. Super 354 (App. Div. 1978).

In the instant matter, there is no evidence that the prosecution "terminated favorably to the plaintiff." Plaintiff had made serious charges against Bodtmann. Bodtmann made serious charges against him. The two appeared in court and mutually dismissed their claims. It is noted that following that, the civil suit did not name Bodtmann the active aggressor as a defendant. Nor did it name the Monmouth County Prosecutor theretofore vilified. For that reason, it cannot be said that the prosecution ended favorably to plaintiff.

A second ground would be the lack of probable cause. It was clear that the dispatcher information and the Villari admission constituted probable cause to arrest.

As a third ground for dismissal, the evidence shows Nash never had any prior dealings with plaintiff. At all times, he acted in a "nice," "polite" and "gentlemanly"

manner. There is no evidence of malicious actuation.

As a fourth ground for dismissal, the court should consider that no such action can be brought in the Federal Court under Section 1983 of 42 U.S. Code, if there is an adequate tort remedy for malicious prosecution available in the state court system. The court is referred to the concurring opinion of Justices Kennedy and Thomas in *Albright v. Oliver* 510 U.S. 266 (1994). In that opinion, the Justices relied upon the earlier ruling in *Parratt v. Taylor* 451 U.S. 527, 535 - 534 for the proposition that state actor's random and unauthorized deprivation of such a due process interest cannot be challenged under 1983 so long as the state provides an adequate post-deprivation remedy. New Jersey affords such an opportunity to persons who can prove the cause of action. Because of the availability of that remedy, the plaintiff's claim is precluded under Section 1983.

POINT FOUR

**THIS DEFENDANT ADOPTS THE
REASONING AND AUTHORITY
SET FORTH IN COMPANION
BRIEFS BY THE ATTORNEYS FOR
THE CO-DEFENDANTS**

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Honorable Court dismiss with prejudice the complaint filed by the plaintiff herein.

/s/ William J. Gearty

Date: January 2, 2009

WILLIAM J. GEARTY
Attorney for the defendant, Nash

WILLIAM J. GEARTY, ESQUIRE

301 Morris Avenue
Spring Lake, New Jersey 07762
Telephone: (732) 449-1114
Facsimile: (732) 449-7292
Attorney for defendant, Officer Nash
wgearty@verizon.net

DAVID K. VILLARI,

Plaintiff,

v.

TOWNSHIP OF WALL, TOWNSHIP OF
WALL POLICE DEPARTMENT, SCOTT
FIFIELD, S. NASH, BADGE #157,
SERGEANT PROMPHREY, JOHN DOE,
being a fictitious name, WEARING BADGE
#151, SERGEANT E. P. LOKERSON,
BADGE #119, E. LISTER, BADGE #142,
MICHAEL MALONE, BADGE #153, John
Does #1 - 10,

Defendants.

: UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

:
Civil Action No. 06-CV-4 (FLW)

:
U.S. Magistrate John J. Hughes

:
Civil Action

ORDER GRANTING

SUMMARY JUDGMENT ON

BEHALF OF DEFENDANT NASH

This matter having been brought before the Court by William J. Gearty, Esquire,
Attorney for Defendant, Officer Steven Nash, and the Court having reviewed the moving
documents submitted and opposition thereto and having heard the argument of counsel;

It is on this day of , 2009,

ORDERED that summary judgment is hereby granted to defendant Officer Steven
Nash and against the plaintiff David K. Villari;

IT IS FURTHER ORDERED that a copy of this Order shall be provided to all
counsel within _____ days of the date hereof.

HONORABLE JOHN J. HUGHES
U.S. MAGISTRATE OF THE U.S.
DISTRICT COURT